IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

WP(C).No. 5290 of 2007(D)

CRIME NO. 213/06 OF CHINGAVANOM POLICE STATION

PETITIONER:

BIJU KURIAKOSE, S/O.O.C.KURIAKOSE,
AGED 39, UMMANCHERIL HOUSE,
KURICHY P.O., CHANGANCHERRY.

BY ADV. SRI.C.S.MANILAL

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETRY TO GOVERNMENT, (HOME DEPARTMENT)
THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, VAZHUTHACAUD P.O.,
TRIVANDRUM.

3. THE SUPERINTENDENT OF POLICE,
KOTTAYAM.

4. THE SUB INSPECTOR OF POLICE,
CHINGAVANAM, KOTTAYAM DISTRICT.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 5290 of 2007 D

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Dated this the 6th day of March, 2007

JUDGMENT

Dissatisfied with the investigation conducted by the 4th respondent, the petitioner/defacto complainant has come before this Court with this Writ Petition.

2. The petitioner was allegedly stopped when he was coming on a two wheeler at 9.30 a.m. on 8.6.2006 by one Biju, the first accused. He was allegedly attacked by four other persons, who came to the scene of occurrence armed with dangerous weapons. The petitioner allegedly suffered injuries, including a grievous hurt. The F.I. statement was lodged by him at 3.30 p.m. at the hospital, where he had reached at 10.30 a.m. on 8.6.2006. He had raised specific allegation that the first accused along with some others had committed the overt acts against him. To the doctor as well as in the F.I. statement such allegations were raised and the wound certificate shows that serious injuries, including fractures, were suffered by the petitioner.

3. Investigation has now been completed and the charge sheet has been filed. The petitioner is aggrieved by the investigation conducted. According to him, accused 2 to 5 are not the real miscreants and the investigating Officer had without proper enquiry and with objectionable and questionable motives with the intention of screening the real offenders has arrayed four persons i.e. accused 2 to 5. They really have nothing to do with the offence. The real offenders are different. To shield them, allegations have been raised against the present accused 2 to 5. This in short is the contention raised.

4. The learned Prosecutor was directed to take instructions. The learned Prosecutor submits that a proper investigation has been conducted in the matter. The case diary has been placed before me for my perusal.

5. Having gone through the entire case diary, I find merit in the objection of the learned counsel for the petitioner that a proper and efficient investigation has not been conducted. First of all I do note that the petitioner had made very specific allegations before the doctor as also before the person who recorded the F.I. statement that in the incident which took place at 9.30 a.m. he had identified the first accused by name and can identify the other four persons, though he could not name them. Such

petitioner/victim has not been examined thereafter admittedly by the Investigating Officer after his statement was recorded from the hospital as the F.I. statement.

6. How did the Investigating Officer ascertain the identity of accused 2 to 5? The short answer is that the pillion rider who was present had given the name of accused 2 to 5 to the Investigating Officer with all details. There is no case that the pillion rider had shared with the petitioner information about the identity of the accused. Most surprisingly the petitioner is not seen questioned after the police allegedly ascertained the identity of the accused persons. The only other piece of evidence to implicate the accused is the alleged recovery of four sticks allegedly used for the commission of the offence when the accused (plural) were interrogated by the Investigating Officer. Significantly it is a joint confession statement. All the accused (.....) are allegedly shown to have made a confession, going by the language of the confession which is extracted in the recovery mahazar.

7. The learned counsel for the petitioner contends that the police are trying to help the real accused persons. The landlord, with whom the petitioner had a dispute and on account of which animosity, according to

the petitioner, this attack was made on him, is closely related to a police officer and it is because of such proximity of the said influential landlord with the powers that be, that proper investigation is not being conducted by the Investigating Officer.

8. The learned counsel for the petitioner ultimately submits that further investigation by a superior police officer of proven competence and integrity may be directed to continue the investigation.

9. Having considered all the relevant inputs, I must say that I am totally dissatisfied with the quality of investigation that has been conducted in this case. The very fact that the complainant, who had given the F.I. statement, wherein he did not name accused 2 to 5, was not requested to identify the accused after they were arrested by the police does speak volumes for the quality of the investigation. No T.I. parade is seen conducted. There is no identification of accused 2 to 5 by the petitioner in the course of investigation.

10. I am satisfied that there must be a direction to the 3rd respondent Superintendent of Police, Kottayam to get a further investigation conducted by a competent superior official of police not below the rank of a Dy.S.P. to be chosen by the third respondent.

11. This writ petition is allowed in part. The third respondent is directed to get further investigation conducted by a superior police officer not below the rank of a Dy.S.P. of proven competence and integrity chosen by the third respondent. Such further investigation shall be completed within a period of three months from this date. Until further report is filed, no further proceedings shall continue on the basis of the final report submitted by the 4th respondent. The learned Prosecutor shall forthwith communicate this direction to the 3rd respondent. The 3rd respondent shall issue the necessary orders with copy to the petitioner within a period of 30 days.

(R. BASANT)
Judge

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